

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA)	
)	
v.)	No. 1:11-cr-06-01-JL
)	
BRIAN MAHONEY)	

GOVERNMENT'S ASSENTED-TO MOTION TO CONTINUE TRIAL UNTIL
AFTER THE COMPETENCY HEARING NOW SCHEDULED FOR JANUARY 3, 2012

The United States of America, by John P. Kacavas, United States Attorney for the District of New Hampshire, hereby requests that the trial now scheduled for December 6, 2011, be continued until a date after January 3, 2012, the date now scheduled for the competency hearing ordered by the Court, pursuant to 18 U.S.C. §4241 et seq.

In support, the United States submits the following:

The Court docket reflects numerous entries detailing the serious issues confronted by the Court regarding the defendant's competence, most recently docket entry #50, dated October 10, 2011. Multiple psychological examinations of the defendant have been ordered and completed. However, as the transcript of the most recent hearing reflects, the defendant has refused to take medications prescribed by the facility in which he has been housed, and such refusal appears to have had a direct impact on the defendant's inability to assist properly in his defense.

Recently, with the assent of the defendant, he has been transferred to a facility that will dispense certain medication that the prior facility would not dispense, if such medication were to be deemed medically appropriate and necessary by that second facility. The undersigned has been advised that said medication, which the defendant had been prescribed prior to his incarceration, is now being administered.

The Court has scheduled a competency hearing for January 3, 2012. It is anticipated that, with the new medication, and with the defendant's cooperation in taking said medication, the Court may finally be able to resolve the issue of the defendant's competence at that January 3, 2012 hearing.

The matter is currently scheduled for trial on December 6, 2011. Given the fact that the Court has found "reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect that could affect his competency to stand trial" (Order dated October 11, 2011; docket entry #50), has ordered multiple competency examinations, and has scheduled a competency hearing for January 3, 2012, the matter clearly cannot be tried until the competence issue is resolved.

Pursuant to the Speedy Trial Act, "[a]ny period of delay resulting from other proceedings concerning the defendant, including but not limited to—(A) delay resulting from any proceeding, including any examinations, to determine the mental competency ... of the defendant" are excluded in computing the time within which the trial of any offense must commence. 18 U.S.C. §3161(h)(1)(A). See also U.S. v. Harris, 660 F.3d 47, 51 (1st Cir. 2011).

On November 30, 2011, the Court ordered that "[c]ounsel shall jointly file a stipulated proposed order within 7 days" with respect to Speedy Trial. Said stipulation shall be filed on, or before, December 7, 2011.

WHEREFORE, the government, with the assent of defense counsel, respectfully requests:

(A) that the trial in this matter be continued from December 6, 2011 to a date after the defendant's competency hearing is held, which is currently scheduled for January 3, 2012; and,

(B) that the intervening time between the date the Court ordered the first competency evaluation (April 22, 2011, docket #26) and the final competency hearing, now scheduled for

January 3, 2012, be excluded from the Speedy Trial calculation.

December 3, 2011

Respectfully submitted,

JOHN P. KACAVAS
United States Attorney

/s/ Arnold H. Huftalen
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CERTIFICATION OF SERVICE & ASSENT

I hereby certify that a copy of this Motion to Continue Trial has been served upon Paul Garrity, Esq., counsel for the defendant, via ecf filing notice this date, December 3, 2011. I further certify that defense counsel assents to the relief sought..

/s/ Arnold H. Huftalen
Arnold H. Huftalen, AUSA